

## Health Insurance Portability and Accountability Act ("HIPAA") Privacy Policy

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Revised Date:

<b>Policy Title:</b>	Client Access to Protected Health Information		
<b>Policy Number:</b>	004	<b>Version:</b>	1.0
<b>Approved By:</b>	John Chappuis		
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### Purpose:

This policy addresses the rights of clients regarding their Protected Health Information (PHI), which is protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

### Policy:

**DPHHS must grant clients the right to access, read, and obtain copies of their own protected health information (PHI) that is held in a Designated Record Set.**

A Designated Record Set ("DRS") is a group of records maintained by or for DPHHS that includes:

- a. The medical records and billing records about clients maintained by or for a covered health care provider;
- b. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- c. Records used, in whole or in part, by or for DPHHS to make decisions about clients.

#### 1. Access

- a. DPHHS must disclose PHI to the client when requested to do so. DPHHS must comply with this request within 30 days of receiving such a request, and may request one 30 day extension if unable to comply within the time limit. Within 10 working days of receiving a request, DPHHS providers must make the information available for examination or deny the request in writing. If unusual circumstances delay the response, DPHHS must

inform the client and specify a date within 21 days of the original request when the information will be available (MCA 50-16-541);

- b. Access may be denied and the client will have no opportunity to request a review by a licensed health care professional in the following circumstances:
  - i. Psychotherapy notes;
  - ii. Information compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative action or proceeding, such as a lawsuit;
  - iii. Information that is subject to or exempt from the Clinical Laboratory & Improvements Act (CLIA) of 1988;
  - iv. A correctional institution or a covered health care provider acting under the direction of the correctional institution may deny, in whole or in part, an inmate's request to obtain a copy of the PHI;
  - v. A client's access to PHI created or obtained by a provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress;
  - vi. A client's access may be denied if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information; and
  - vii. The information is not held by DPHHS. In this instance, DPHHS must refer the client to whoever holds the information.
- c. A client may request a copy of his/her own PHI. DPHHS must respond with information that is part of the DRS. A charge, based upon the cost of reproducing the materials, may be charged for copying costs. A DRS held by State agencies administering the Medicaid program may only be available in the format generated by the system.
- d. DPHHS may provide the client with a summary or explanation, in lieu of providing access to the PHI, if the client agrees to such a summary or explanation and the client agrees to any fees imposed for a summary or explanation.
- e. DPHHS must provide access at a convenient time and place to inspect or obtain a copy of the PHI, or mail a copy of the PHI at the client's request.
- f. DPHHS must document and retain the DSR that are accessed by clients and the titles of individuals or offices that are responsible for receiving and processing requests for access by individuals.
- g. DPHHS must treat a personal representative of the client, as the client, for purposes of access to PHI unless DPHHS believes that the access to such information by the personal representative would pose a threat of injury to the client. Parents or guardians of unemancipated minors are considered the personal representatives of the minors, unless the minor has been given the legal right to consent for particular types of healthcare, in which case the minor has the right to govern uses and disclosures of their own PHI (MCA

41-1-402). Individuals who have the authority to make health care treatment decisions on behalf of the client, such as those with powers of attorney, and executors of estates for deceased clients are considered personal representatives of the client with regard to PHI (MCA 50-16-521).

## 2. Denial of Access

- a. In addition to those exceptions defined above where access may be denied without the opportunity for the client to review the denial, there are circumstances where DPHHS may deny access based upon State or Federal regulations. The denial must be in writing and must notify the client of the basis for the denial, a statement of the individuals right to review, a description of how the client may complain to DPHHS or HHS, and the contact information for the individual or office receiving complaints on privacy. These denials are subject to review by the client:
  - i. Knowledge of the information would, in the judgment of the licensed health care professional, pose risks or potential injury to the health of the client;
  - ii. Knowledge of the information could reasonably be expected to cause danger to the life or safety of any individual; and
  - iii. Access is otherwise prohibited by law.
- b. If DPHHS denies access to the PHI, it must segregate and make available any other health information that does not qualify for the denial of access as defined above.
- c. If access is denied and the denial is reviewable, the client has the right to have the denial reviewed by a neutral, licensed health care professional designated by DPHHS. DPHHS must promptly refer the request to the designated reviewer, who must determine within a reasonable period of time whether to uphold the denial and must promptly provide written notice of the determination to the client.